BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ALFRED T. JOHNSON	)	
Claimant	)	
VS.	)	
	)	
STATE OF KANSAS	)	Docket No. 1,060,601
Respondent	)	
AND	)	
	)	
STATE SELF-INSURANCE FUND	)	
Insurance Fund	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance fund appealed the March 8, 2013, preliminary hearing Order for Medical Treatment entered by Administrative Law Judge (ALJ) Brad E. Avery. George H. Pearson of Topeka, Kansas, appeared for claimant. Nathan D. Burghart of Lawrence, Kansas, appeared for respondent and its insurance fund (respondent).

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the March 5, 2013, preliminary hearing and exhibit thereto; the transcript of the October 23, 2012, preliminary hearing and exhibits thereto; the transcript of the June 26, 2012, preliminary hearing and exhibits thereto; and all pleadings contained in the administrative file.

ISSUES

Claimant alleged he suffered a back injury on April 4, 2012, when he attempted to prevent a patient he was drying in a bathtub from falling. Claimant had twisted to grab the patient who had started to fall and as both fell the claimant hit his chest on the bathtub. Claimant testified at the June 2012 preliminary hearing that he did not experience any pain or symptoms that day. K.S.A. 2011 Supp. 44-508(d) now requires the accident to produce at the time symptoms of an injury. Respondent denied the claim because claimant did not experience any symptoms at the time of the incident and consequently did not have an accident.

In a preliminary hearing Order dated June 27, 2012, ALJ Avery found claimant's symptoms were "contemporaneous" with the accident as they occurred within two days of the accident. The ALJ further determined the claimant's "[a]ccident was the prevailing factor causing the injury and medical condition and need for treatment."[1]

Respondent appealed to the Board. In an Order issued on September 14, 2012, a Board Member reversed the preliminary hearing Order of ALJ Avery. A more detailed discussion of that Order is set out below.

Another preliminary hearing was held on March 5, 2013. Claimant and his wife testified that claimant experienced symptoms shortly after the accident. ALJ Avery issued an Order for Medical Treatment on March 8, 2013, finding that claimant sustained a personal injury by accident arising out of and in the course of his employment with respondent. A more detailed discussion of ALJ Avery's analysis is set out below.

Respondent requests review of whether claimant sustained his burden of proof that he suffered an accidental injury arising out of and in the course of his employment with respondent. Respondent argues that K.S.A. 2011 Supp. 44-508(d) requires that an accident produce at the time symptoms of an injury and in this case claimant testified at the June 26, 2012, preliminary hearing that his fall did not cause any symptoms at that time. Respondent asserts that after the Board's September 14, 2012, Order, claimant changed his testimony and that such testimony is not credible.

Claimant argues that ALJ Avery's March 8, 2013, Order should be affirmed.

The sole issue raised on appeal from the preliminary hearing is whether claimant suffered accidental injury arising out of and in the course of his employment with respondent.

FINDINGS OF FACT

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds:

Findings of Fact in the Board Member's Order dated September 14, 2012

Claimant began working for respondent at Kansas Neurological Institute in December 1982. His job as a medical health technician involves working with adult individuals who have an aggressive behavior and helping them with activities of daily living. On Wednesday, April 4, 2012, claimant attempted to grab a resident to prevent him from falling in the bathtub. Claimant described the accident:

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[1] ALJ Order for Medical Treatment (June 27, 2012) at 1.

> Oh, the accident was a young man was in the bathtub and he stood up to be dried off so that means I had to turn away from him. The towel was to my left so in my turning to pick up the towel he began to scream out and started falling so in my awkward bent position I was able to reach and grab him and prevent some of the fall but not all of the fall because he still got injured but I was able to break some of the fall and able to just continue to go down with him in the tub.[2]

Claimant hit his upper chest on the bathtub and testified that he did not have any pain or symptoms after the fall. Claimant worked the remainder of his shift and said he had no pain or symptoms the remainder of that day. He also worked his full shift the following day, but that night at approximately 10:15 p.m., he mentioned to his wife that his back was tingling and felt "funny." On Friday morning, claimant was not able to get out of bed due to severe pain in his back and lower left side.

Claimant reported his accident to his supervisor. And the following Monday he completed an accident report. About a week after the accident, claimant was referred for medical treatment. Claimant was treated by Dr. Laurel A. Vogt at St. Francis Hospital.

Claimant has continued to work for respondent. He has only missed approximately three days. Claimant was on light-duty restrictions until respondent denied his claim. Claimant received a letter dated April 12, 2012, indicating that his workers compensation claim had been denied. Consequently, claimant continues to work performing his regular job duties.

At the time of the preliminary hearing, claimant was having pain in his lower back on the left side and continuing down his left leg. Claimant testified that he is not able to stand or sit for an extended period of time.

At the request of claimant's attorney, Dr. Edward J. Prostic examined claimant on May 29, 2012, and opined that claimant sustained a low back injury during the course of his employment with radicular symptoms of the L5 and S1 nerve root on the left. Dr. Prostic recommended continued conservative treatment. Finally, Dr. Prostic opined that the work-related accident on April 4, 2012, was the prevailing factor in claimant's injury and need for treatment.

Conclusions of Law in the Board Member's Order dated September 14, 2012

Respondent argues that the recent amendments to the workers compensation act have changed the definition of "accident" to require that the accident produce symptoms of injury at the time of occurrence. In this instance claimant admittedly did not have any pain or symptoms at the time he fell against the bathtub.

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[2] P.H. Trans. (June 26, 2012) at 13.

K.S.A. 2010 Supp. 44-508(d) defined "accident":

> Accident means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

Effective May 15, 2011, the definition of accident was amended and K.S.A. 2011 Supp. 44-508(d) now defines accident in the following manner:

> 'Accident' means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. 'Accident' shall in no case be construed to include repetitive trauma in any form.

The amended statute eliminated the sentence that contained the phrase that the elements of an accident are not to be construed in a strict and literal sense and replaced that sentence with the phrase that requires the accident to be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. Moreover, the accident must be the prevailing factor in causing the injury. In statutory construction a material change in a statute made by an amendatory act is presumed to change the original statute.[3] Moreover, in *Bergstrom*,[4] the Supreme Court noted that when a workers compensation statute is plain and unambiguous, effect must be given to its express language. Under the new amended definition, in order to qualify as an accident under the act there must be symptoms of an injury at the time of the occurrence.

Applying the new definition of accident to the facts of this case results in a finding that because claimant did not have any symptoms of an injury at the time of the occurrence, the incident at work does not meet the new statutory definition of accident. The unfortunate consequence is that under the new definition of accident, claimant has failed to meet his burden of proof that he suffered a compensable "accident" at work.

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[3] *Shapiro v. Kansas Public Emp. Retirement System*, 211 Kan. 452, Syl. ¶ 2, 507 P.2d 281 (1973).

[4] *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 214 P.3d 676 (2009).

Pertinent Facts from the March 5, 2013, preliminary hearing and ALJ Avery's March 8, 2013, preliminary hearing Order for Medical Treatment

Claimant's wife, Yolanda C. Johnson, indicated that prior to testifying, she and claimant had read and discussed with each other the Board's September 14, 2012, Order. Mrs. Johnson testified that on the day of the accident, she called claimant at 4:37 p.m., which was during his shift. A copy of Mrs. Johnson's cell phone record, showing the call lasted two minutes, was placed into evidence. Mrs. Johnson testified as follows:

> Q. (Mr. Pearson) And tell me exactly what you think he told you.
>
> A. (Mrs. Johnson) At that point, they -- he said to me that -- did I need something, that he had a lot going on, there was a person that he served that got hurt, and he was trying to fill out the paperwork.[5]
>
> Q. Okay. Well, did he mention anything --
>
> A. And then I asked him was he okay. And at that point he told me that he felt a little something, and he will discuss that with me later.
>
> Q. Felt a little something in regard to what?
>
> A. In his back. His low back at that time.
>
> Q. Did he use any specific terminology about what he felt in his low back?
>
> A. That he felt like he had tweaked his back.[6]

Mrs. Johnson testified that she had conversations with claimant about the accident during the evenings of April 4 and 5, 2012. On the evening of April 4, claimant said something was not right with his back, that he could feel pressure, but it was not severe. Mrs. Johnson testified claimant was going to give his back some time and if it continuously hurt, he would seek medical treatment. During the telephone call and the conversation the evening of April 4, 2012, claimant did not mention a left leg injury to Mrs. Johnson, but claimant did indicate he had low back pain on the left side. Two days later, on the morning of April 6, 2012, claimant awoke with severe back pain and could not move.

Claimant testified that his chest hit the tub when the resident fell and that claimant hurt his chest when he fell on the tub. He described it as feeling like doing 20 pushups for

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[5] Claimant indicated the paperwork was an incident report concerning the resident who was injured, not a workers compensation accident report.

[6] P.H. Trans. (Mar. 5, 2013) at 9-10.

the first time and feeling soreness. Claimant was also asked about the telephone conversation he had with his wife on the day of the accident. He testified:

> Q. (Mr. Pearson) So what did she tell you?
>
> A. (Claimant) She said, "That's not true," she said, "because we talked, and you told me that you had to get off the phone because a client had an incident -- G.B. had an incident, and -- and you would call me back later." And she asked me was I okay. And she said I said, "My back feels funny." But I don't recall saying that to her.[7]

Claimant acknowledged that he would normally not use the term "tweaked." ALJ Avery questioned claimant about this:

> JUDGE AVERY: Okay. In sports, when you say something got tweaked, it means -- usually means, "I don't know what's wrong with it, but something hurts."
>
> THE WITNESS: Yes, sir.
>
> JUDGE AVERY: Is that what you meant?
>
> THE WITNESS: Yes, sir. Like when I ran the mile or something and your ankle -- you tweak your ankle, the coach will say, "You tweaked it, but it's not broken." But it's tweaked, and it's just a soreness.
>
> JUDGE AVERY: You just don't know what's wrong with it.
>
> THE WITNESS: Yes, sir.
>
> JUDGE AVERY: It hurts, though. When did your back hurt?
>
> THE WITNESS: Then, at the moment?
>
> JUDGE AVERY: On the day we're talking about, the day you --
>
> THE WITNESS: Yes. Oh. She asked me, and I said -- I said that I tweaked my back, but I didn't know that I had an injury to it.[8]
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> . . . .
>
> JUDGE AVERY: You may not know what was wrong with it --

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[7] *Id.* at 29-30.

[8] *Id.* at 31-32.

> THE WITNESS: Yes, sir.
>
> JUDGE AVERY: -- but are you saying it hurt?
>
> THE WITNESS: Well, also, I didn't see at the incident. I had a back injury two years before, so when I told her that I tweaked my back, I was referring to that it felt the same way it was when I hurt it before. So with me using that term that she said I used, I can understand why she said I used that term. But I didn't see that as an injury at that point in time.
>
> JUDGE AVERY: You didn't see it was a new injury.
>
> THE WITNESS: Yes, sir.[9]

Claimant testified that he recalled telling his wife the evening of April 4 that his back felt funny.

Claimant indicated that he answered truthfully at the June 26, 2012, preliminary hearing when he said he had no symptoms of pain, based on what he knew as pain. He indicated pain and symptoms mean two different things to him. Claimant testified that he "didn't see a tweak as a symptom. I just knew my back felt -- had a tweakness in it, but I didn't see it as an injury. That's what I -- that's -- I always was dealing with injuries and symptoms. So the injury means did I know I was injured at that time. That's my understanding of the question. I didn't know that."[10]

During the preliminary hearing, claimant's testimony seemed to vary, depending on who was asking the questions. When claimant's attorney conducted his second direct examination of claimant, claimant testified that he was not sure he had any symptoms other than a sore left chest, but in light of the conversation he had with his wife, he must have tweaked his low back. ALJ Avery then asked claimant when he tweaked his low back, and claimant said, "I think I tweaked it in the fall, in the catching of Mr. G. B."[11] When questioned further by ALJ Avery, claimant then testified that the first time he realized he tweaked his back was when he told his wife on the telephone, 12 minutes later. Claimant explained that he did not think he tweaked his back at the time of the incident because of the adrenaline from the incident.

ALJ Avery stated in his March 8, 2013, Order:

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[9] *Id.* at 33.

[10] *Id.* at 46-47.

[11] *Id.* at 62.

The Court finds claimant suffered personal injury by accident that arose out of and occurred in the course of his employment with the respondent. The accident was the prevailing factor causing the injury, medical condition and disability. Medical treatment granted with Dr. Veloor until further order or when claimant reaches maximum medical improvement.

In this case, the Court previously found the claimant suffered a personal injury by accident which arose out of his employment with the respondent. The Court further found the accident was the prevailing factor causing the injury and need for treatment.

The Workers Compensation Board reversed this finding based upon its determination that claimant did not have an "accident." K.S.A. 44-508(d) 2011 Supp. states:

> "Accident" means an undesigned sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

Because claimant testified at the preliminary hearing of June 27, 2012 that his back symptoms did not manifest themselves immediately but rather came on within two days of his accident, the Board found the claimant did not have an "accident." Citing *Bergstrom v. Spears*[,] 289 Kan. 605 (2009), the Board noted that when a "workers compensation statute is plain and unambiguous, effect must be given to its express language."

There is no dispute that claimant was injured after he attempted to prevent a resident of his employer, the Kansas Neurological Institute, from falling backwards. The claimant was assisting the resident while the resident was taking a bath. When the resident stood in the bath, Mr. Johnson reached for a towel to assist in drying him. At that moment, claimant noticed the resident was falling, and Mr. Johnson managed to grab the resident by his left arm to soften the blow.

The resident suffered a contusion on his back and a bump on his head. Mr. Johnson was dragged down by the weight of the resident and his left chest struck the edge of the bathtub. Claimant testified at his March 5, 2013 preliminary hearing that he felt pain in his left chest after striking the tub and he told his wife approximately 12 minutes later when she called him that he had also "tweaked" his back[.]

The Court firmly believes both Mr. and Mrs. Johnson were credible witnesses, despite the fact that Mr. Johnson contradicted his previous testimony

that he suffered no symptoms. One of the reasons for the contradictory testimony was poor memory. Subsequent to the Board's order, Mrs. Johnson had to remind her husband that she had called him on the date of his accident about another matter. Claimant's injury arose as a topic of conversation on the day of the conversation because Mr. Johnson told his wife he had to get off the phone so he could fill out the incident report regarding the resident's fall.

Mrs. Johnson provided documentation that the call had occurred. Mr. Johnson's memory is blank regarding his symptoms and what precisely happened between the time the resident fell and when he talked to his wife. The Court finds Mr. Johnson's lack of memory stemmed from his concern and focus, at the time of his accident, for the safety of the resident and not any attempt to defraud the respondent or fool the Court.

It also finds claimant's symptoms were more than likely manifest at the time of the accident and thus claimant suffered personal injury by accident which arose out of and occurred in the course of his employment with the respondent. The accident was the prevailing factor causing the injury and need for treatment per the report of Dr. Prostic.

Regardless of precisely when the claimant's symptoms appeared, case law regarding the rules for statutory interpretation do not require the Court to construe the language of K.S.A. 44-508(d) literally nor is the Court required to reach the absurd result of denying compensation to a claimant who clearly had an accident at work that was caused by work duties for the singular reason that his symptoms were not allegedly manifest in an undefined period referred to in the statute as "the time."

The phrase, "produce at the time symptoms of an injury" is not defined within the statute. Apparently, the Board concluded that it was the legislature's intent to require that unless symptoms appear at the precise moment of injury than *[sic]* a claimant cannot have a compensable injury because he did not have an "accident."

"Word[s] and phrases that have acquired a peculiar and appropriate meaning in law are to be construed accordingly. *Galindo v. City of Coffeyville*, 256 Kan[.] 455, 465 (1994) as cited in *Foos*, op.cit. at 695-696. In *Foos v. Terminex*[,] 277 Kan. 687, 693 (2004), op. cit., the Supreme Court interpreted K.S.A. 1999 Supp. 44-501(d) which stated in relevant part:

> The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use of consumption of alcohol.....It shall be conclusively presumed that the employee was impaired due to alcohol if it is shown that at the *time of the injury* that the employee had an alcohol concentration of .04 or more. (emphasis added).

The Supreme Court found that "contemporaneous" collection of the blood samples which established the claimant's alcohol level satisfied the requirement that it be collected "at the time of the injury." The samples were actually collected from the claimant in *Foos*, op. cit. after he was taken to the hospital following an automobile accident but not at the precise "time of the injury."

The conclusion that symptoms must appear at the instant of the accident is also belied by K.S.A. 44-501b(a)(b) which clearly state legislative intent to be:

> (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.
>
> (b) If in any employment to which the workers compensation act applies, and *[sic]* employee suffers personal injury by accident[,] repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

When the interpretation of a section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be read according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law. *State ex.rel. v. Kalb*[,] 218 Kan. 459[,] [543 P.2d] 872 (1975); modified on other grounds, 219 Kan[.] 231 (1976); *Injured Workers of Kansas v. Franklin*[,] 262 Kan. 840, 869 (1997).

In *Todd*, the Kansas Supreme Court held that "the legislature is presumed to intend that a statute be given a reasonable construction, so as to avoid unreasonable or absurd results." *Todd v. Kelly*, 251 Kan. 512, 520, 837 P.2d 381 (1992). See also *League of Kansas Municipalities v. Board of Shawnee County Comm'rs*, 24 Kan. App. 2d 294, 298, 944 P.2d 172 (1997).

It would be an absurd result if this Court were required to disregard evidence that a claimant had an accidental injury at work because the symptoms did not appear at the moment of the accident. It would also constitute disregard of the explicit instruction of the legislature that the Workers Compensation Act be "liberally construed only for the purpose of bringing employers and employees within the provisions of the act."

In view of the Supreme Court's instruction in *Foos*, op. cit., the Court finds it is not required to ignore the fact that claimant had an accident at work in order to conform with the literal language of undefined terminology. The relevant portion of K.S.A. 44-508(d) is not plain or unambiguous, as *Foos*, op. cit. and its alternative

interpretation by the Supreme Court has demonstrated. The previously cited instruction in *Bergstrom*, op. cit. should not apply.

PRINCIPLES OF LAW AND ANALYSIS

The issue raised in this appeal is of considerable importance and the undersigned Board Member sought and received input from the entire Board. However, the review of the preliminary hearing Order was ultimately determined by the undersigned Board Member.

From ALJ Avery's questioning of claimant, it is apparent that ALJ Avery believed that claimant's symptoms began immediately following the accident or shortly thereafter. It is equally apparent from ALJ Avery's March 8, 2013, Order that he adamantly disagreed with this Board Member's September 14, 2012, Order.

ALJ Avery would have the Board ignore the Kansas Supreme Court's legal maxim in *Bergstrom* that when a workers compensation statute is plain and unambiguous, effect must be given to its express language. At page 2 of his March 8, 2013, Order, ALJ Avery stated, "Regardless of precisely when the claimant's symptoms appeared, case law regarding the rules for statutory interpretation do not require the Court to construe the language of K.S.A. 44-508(d) literally . . . ." The Kansas Legislature changed the definition of accident in K.S.A. 2011 Supp. 44-508(d). K.S.A. 2011 Supp. 44-508(d) states in part that "[a]n accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift." Ordinarily, courts presume that by changing the language of a statute the legislature intends to clarify its meaning or to change the effect.[12]

ALJ Avery erroneously compared the present claim to *Foos*.[13] In *Foos*, a sample of Foos' blood was drawn at a hospital several hours after he was in a motor vehicle accident in his employer's vehicle while on his way home. One of the requirements of K.S.A. 44-501(d)(2) was that the test sample had to be collected at a time contemporaneous with the events establishing probable cause. K.S.A. 2011 Supp. 44-508(d) is more specific than the version of K.S.A. 44-501(d)(2) that was in effect at the time *Foos* was decided. The word "contemporaneous" does not specify a specific time period. When the Kansas Legislature enacted K.S.A. 2011 Supp. 44-508(d), it was very specific in requiring that an injured worker's accident must produce at the time symptoms of an injury, and occur during a single work shift.

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[12] *Watkins v. Hartsock*, 245 Kan. 756, 759, 783 P.2d 1293 (1989), citing *Board of Education of U.S.D. 512 v. Vic Regnier Builders, Inc.*, 231 Kan. 731, 648 P.2d 1143 (1982).

[13] *Foos v. Terminex*, 277 Kan. 687, 89 P.3d 546 (2004).

At the June 26, 2012, preliminary hearing, claimant testified he had no symptoms until 10:15 p.m. the day after the accident, when his back felt "funny." The second day after the accident, April 6, 2012, claimant woke up with back pain and reported the accident to respondent. It was only after reading the Board's September 14, 2012, Order and being questioned by his attorney and ALJ Avery at the March 2013 preliminary hearing that claimant recalled having symptoms shortly after the accident. Claimant testified that by the time of the March 5, 2013, preliminary hearing, that he now knows what symptom means and that he had symptoms on the date of the accident.

Claimant also testified at the March 5, 2013, preliminary hearing that immediately after the accident his chest was sore, as though he had done 20 pushups. Claimant's wife testified that claimant indicated in a telephone call a few minutes after the accident that he "tweaked" his back. Claimant's testimony about the telephone conversation with his wife evolved during the preliminary hearing. When first questioned by his own attorney, claimant testified that he could not recall telling his wife that his back felt funny. At another point, claimant indicated vaguely remembering the telephone conversation with his wife. Later, claimant testified that he remembered telling his wife in the telephone conversation that his back felt funny and that he had tweaked it.

While claimant was indecisive and his testimony sometimes confusing, there is sufficient evidence that he experienced low back symptoms at the time of the accident or shortly thereafter as required by K.S.A. 2011 Supp. 44-508(d). Claimant's explanation that he did not know a "tweak" was a symptom is plausible. ALJ Avery did have an opportunity to observe claimant testify and found his March 5, 2013, testimony credible. The testimony of claimant's wife about the telephone conversation she had with claimant on the day of the accident is convincing and persuasive. Therefore, this Board Member finds that claimant proved by a preponderance of the evidence that he sustained a personal injury by accident on April 4, 2012, arising out of and in the course of his employment with respondent.

This Board Member wishes to clarify that ALJ Avery's legal analysis is erroneous. K.S.A. 2011 Supp. 44-508(d) requires the accident to produce at the time symptoms of an injury. The testimony of claimant and his wife at the March 5, 2013, preliminary hearing establishes claimant's accident produced at the time symptoms of an injury.

By statute the above preliminary hearing findings are neither final nor binding as they may be modified upon a full hearing of the claim.[14] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted

[14] K.S.A. 2012 Supp. 44-534a.

by K.S.A. 2012 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[15]

WHEREFORE, the undersigned Board Member affirms the March 8, 2013, preliminary hearing Order for Medical Treatment entered by ALJ Avery.

IT IS SO ORDERED.

Dated this ____ day of June, 2013.

THOMAS D. ARNHOLD
BOARD MEMBER

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Brad E. Avery, Administrative Law Judge

[15] K.S.A. 2012 Supp. 44-555c(k).